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10/521,399	07/08/2005	Gunter Orschulik	40000841-154775	2200

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EXAMINER

HAYES, KRISTEN C

ART UNIT	PAPER NUMBER
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3643

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03/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,399	Applicant(s) ORSCHULIK, GUNTER	
	Examiner KRISTEN C. HAYES	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-8,10-15,18-20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-8, 10-15, 18-20, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3, 5-15, 18-20 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Some added limitations in claim 1, it seems as if the applicant has added method steps into the claims (such as "wherein the coaster and the pot are attached by axially moving the coaster relative to the pot until the guide surface of the coaster engages the guide surface of the pot" and "and then mutually twisting the coaster and the pot about the central axis of symmetry of the pot" at the bottom page 1). These limitations are positively claimed, but do not seem to add any structural limitation to the device.

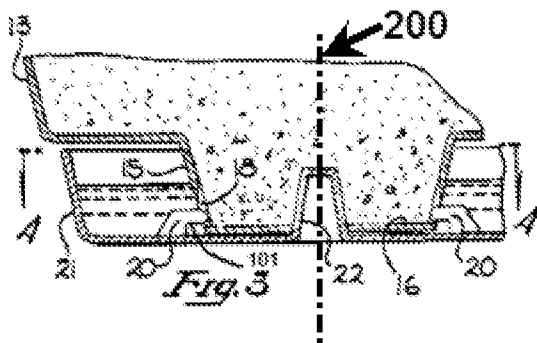
Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

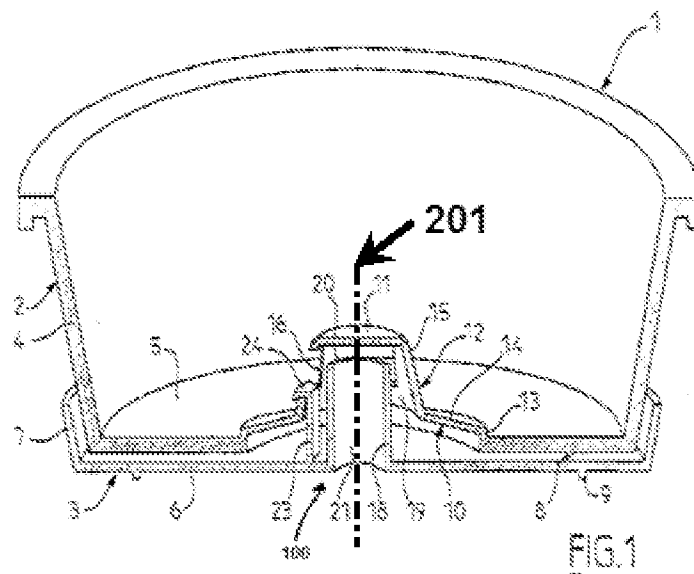
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3643

2. Claims 1, 3, 5-7 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599.



Modified Figure 3, US Patent 3,949,524



Modified Figure 1, EP 0 842 599

3. Regarding claim 1, Mickelson discloses a plant container comprising a pot (11) and a coaster (21), whereby the coaster which is closed at the bottom and serves as a water dish (Mickelson, column 3: lines 16-17) is to be detachably attached (Mickelson, column 1: lines 59-62) by coupling elements (18, 20) to the pot which is provided with holes (18) on the bottom, the coaster having a dome in the truncated cone forming a guide surface (22) tapering in conical

Art Unit: 3643

shape, with the coaster and the pot are mutually engaged via at least one guide surface (22) tapering in a conical shape and they become engaged with one another by means of the coupling elements via a rotational movement (Mickelson, column 3: lines 6-9), wherein the coupling elements include a plurality of openings (18) spaced about the central axis of symmetry of the pot and a plurality of hooks (20) cooperating with the openings; wherein the coaster and the pot are attached by axially moving the coaster relative to the pot (Mickelson, column 3: lines 6-9); and a central axis of symmetry of the pot (200) and coaster wherein the guide surface of the coaster is aligned rotationally symmetrical about a central axis of symmetry of the coaster; and mutually twisting the coaster and the pot about the central axis of symmetry of the pot (Mickelson, column 3: lines 6-9). Not disclosed is the device being made of plastic, the pot having a dome in the shape of a truncated dome. However, the examiner takes official notice that it is well known to those in the art to use plastic as a material for planters. The device being made of plastic would allow the pot and coaster to easily engage each other by allowing the coupling elements to elastically deform. Additionally, the examiner also notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Grigi teaches the pot (1) and coaster (3) with central axis of symmetry (201) being designed with a dome in the shape of a truncated cone with the pot and the coaster having abutting guide faces (Grigi, Figure: 1); wherein the guide surface of the pot is aligned rotationally symmetrical about a central axis of symmetry of the pot and the guide surface of the coaster is aligned and parallel with the central axis of symmetry of the pot, and axially moving the coaster relative to the pot until the guide surface of the coaster engages the guide surface of the pot (Grigi, Figures 3, 4). The pot and coaster both being designed with a dome would allow the domes to be concentrically aligned. The concentric fit of the domes would aid in providing a

Art Unit: 3643

secure connection between the pot and the coaster. Also, this alignment would ensure that the coaster was directly under the pot, which would aid it in catching water draining from the pot. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pot of Mickelson with the dome of Grigi, as discussed above.

4. Regarding claim 3, Mickelson as modified by Grigi discloses a device with the limitations of claim 1 but does not disclose the dome being provided with the coupling elements. Grigi teaches a dome (21) provided with coupling elements (23). The coupling elements being on the dome would allow for alignment of the coaster with respect to the pot. The location of the coupling elements would simplify the mating of the elements. If the coupling elements were in different locations throughout the device they would be more difficult to align and would complicate the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the position of the coupling elements of Mickelson with the position of the coupling elements of Grigi in order to simplify the mating of the elements.

5. Regarding claim 5, Mickelson as modified by Grigi discloses a device with the limitations of claim 4 and further discloses the coupling elements being designed in the form of hooks on the coaster and holes in the wall of the pot (Mickelson, Figure: 2).

6. Regarding claim 6, Mickelson as modified by Grigi discloses a device with the limitations of claim 5. Mickelson further discloses openings (18) provided on an end face of the dome of the pot with hooks engaging in these openings in a coupling engagement with mutual rotation (Mickelson, column 3: lines 6-9). Mickelson does not disclose the hooks protruding upward on an end face of the dome of the coaster. However, Grigi teaches the hooks being designed so that they protrude upward on an end face (100) of the dome of the coaster. It would require more effort to disengage the pot with the coaster with the hooks protruding upward than on an end face. The device would not only require a rotational movement, but also a lifting or thrusting

Art Unit: 3643

movement for the hooks to clear the openings thereby disengaging the pot from the coaster.

This would ensure that the pot did not become disengaged from the coaster accidentally.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the position of the hooks of Mickelson with the position of the hooks of Grigi to ensure that the pot did not become disengaged from the coaster accidentally.

7. Regarding claim 7, Mickelson as modified by Grigi discloses a device with the limitations of claim 6. Mickelson as modified further discloses the hooks having a hook mouth (101) pointing in the radial direction on at least on side.

8. Regarding claim 18, Mickelson as modified by Grigi discloses a device with the limitations of claim 1 wherein the coupling elements are secured by catch elements having inclined edges (in that 16 has a height, and therefore an edge)engaged by the hooks (Mickelson, column 3: lines 36-39).

9. Regarding claim 19, Mickelson as modified by Grigi discloses a device with the limitations of claim 1 but does not disclose the dome protruding upward above an edge of the coaster. However, Grigi teaches the dome protruding upwards above an edge of the coaster (Grigi, Figure: 1). The dome protruding upwards above an edge of the coaster would ensure the dome was deeply located within the pot. This would increase the stability of the device, preventing it from tipping over. The dome protruding upwards above an edge of the coaster, and therefore above the joining seam of the pot and coaster would also prevent the pot being torn away from the coaster along the seam. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dome of the device of Mickelson with the dome extending upwards above an edge of the coaster as taught by Grigi to ensure that the device was not tipped over or torn along the joining seam.

Art Unit: 3643

10. Regarding claim 20, Mickelson as modified by Grigi discloses a device with the limitations of claim 1 but does not disclose a spacer element. However, Grigi teaches a coaster having a spacer element (8) with respect to the pot. Spacers are well known in the art to create a space between a pot and coaster, allowing for the pot to serve as a reservoir or to aid aeration of the roots. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the coaster of Mickelson with the spacer elements as taught by Grigi to aid in the aeration of roots and to act as a reservoir.

11. Claims 8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599 as applied to claims 1, 3, 5-7 and 18-20 above, and further in view of Wells US Patent 1,391,353.

12. Regarding claims 8, Mickelson as modified by Grigi discloses a device with the limitations of claim 7 but do not disclose the openings that narrow as in the shape of a keyhole. However, Wells teaches an opening (7) which has a width that narrows in the direction of rotation in the manner of a keyhole (Wells, page 1: lines 85-87). The keyhole shape of the opening would ensure that the opening and the hook did not become easily realigned, which would separate the pot and coaster. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the opening of Mickelson as modified by Grigi with the keyhole shape of Wells to complicate the alignment of the opening and hook, thereby reducing the chances of the pot and coaster accidentally separating.

13. Regarding claim 10, Mickelson as modified by Grigi and Wells further discloses the coupling elements being secured by catch elements having inclined edges (in that 16 has a height, and therefore an edge) engaged by the hooks (Mickelson, column 3: lines 36-39).

14. Regarding claim 11, Mickelson as modified by Grigi and Wells discloses a device with the limitations of claim 10. Mickelson does not disclose the dome protruding upwards above an

Art Unit: 3643

edge of the coaster. Grigi teaches the dome protruding upwards above an edge of the coaster (Grigi, Figure: 1). The dome protruding upwards above an edge of the coaster would ensure the dome was deeply located within the pot. This would increase the stability of the device, preventing it from tipping over. The dome protruding upwards above an edge of the coaster, and therefore above the joining seam of the pot and coaster would also prevent the pot being torn away from the coaster along the seam. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dome of the device of Mickelson, as modified, with the dome extending upwards above an edge of the coaster as taught by Grigi to ensure that the device was not tipped over or torn along the joining seam.

15. Regarding claim 12, Mickelson as modified by Grigi and Wells discloses a device with the limitations of claim 11. Mickelson does not disclose the coaster provided with a spacer. However, Grigi teaches the coaster provided with a spacer (8) element with respect to the pot. Spacers are well known in the art to create space between pots and coasters, allowing the space to act as a reservoir for water or air. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Mickelson, as modified, with spacers of Grigi to provide a reservoir and aeration for the pot.

16. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599 and Wells US Patent 1,391,353 as applied to claims 8-12 above, and further in view of Kay et al US Patent 4,315,382.

17. Regarding claims 13 and 14, Mickelson as modified by Grigi and Wells discloses a device with the limitations of claim 12 but do not disclose the spacer element being a ring or including a row of interrupted ring sections. However, Kay teaches the spacer element being designed in an interrupted ring shape in the coaster (Kay, Figure: 3), as is known in the art. The spacer being in the shape of a ring or interrupted ring would provide spacers to a large area of

Art Unit: 3643

the pot, ensuring that the space was uniform. If the spacer was not evenly distributed the position of the pot within the coaster would be tilted, which would decrease the stability of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Mickelson as modified by Grigi and Wells with the spacer in the shape of an interrupted ring of Kay to ensure the stability of the device.

18. Regarding claim 15, Mickelson in view of Grigi, Wells and Kay discloses a device with the limitations of claim 13. Kay teaches the spacer element including an interrupted hollow rib (Kay, Figures: 3, 4), with its hollow space being subdivided by at least one web (54). The hollow rib would be formed by molding, a process well known in the art and also taught by Kay (column 4: lines 41-44), to create pots and coasters. The manufacture of the device by molding would allow a large number of identical devices quickly and inexpensively. The hollow space of the rib being subdivided by a web is also well known in the art. The webs are used as additional spacers, or to prevent the devices from becoming locked together when stacked. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the rib of Kay hollow and to modify it with a web to prevent the devices from becoming locked together when stacked, as is known in the art.

Response to Arguments

19. Applicant's arguments filed 01/13/2009 have been fully considered but they are not persuasive.

20. Mickelson and Grigi are still considered as disclosing a coaster and pot centrally aligned and parallel.

4. In response to applicant's arguments against the references individually (in that Mickelson and Grigi do not form a bayonet-type coupling connection), one cannot show

Art Unit: 3643

nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

5. As to Mickelson and Grigi not disclosing "a bayonet-type coupling connection". It is noted that this is functional language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Furthermore, the bayonet coupling is broadly claimed as a "bayonet-type" coupling. Mickelson is considered as showing hooks cooperating with openings to form a bayonet-type coupling in that mating hook and opening elements of Mikelson form a coupling by rotational movement.

21. The applicant has amended the claim to include a plethora of functional limitations ("the hooks *can be* axially inserted"; "hooks cooperating with the openings *to form* a bayonet-type coupling"; etc.). If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3643

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. HAYES whose telephone number is (571)270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
23 March 2009

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643